

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 593 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ISHWARSINH RAMCHAND CHAUHAN

Versus

STATE OF GUJARAT

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Appearance:

MR KB ANANDJIWALA for Petitioners

PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/02/98

ORAL JUDGEMENT

1. Rule. Ms.B.R.Gajjar, Ld.APP waives service of rule on behalf of respondents. Heard Learned advocate Mr.K.B.Anandjiwala for petitioners and Ms.B.R.Gajjar, Ld.APP for respondents. With the consent of learned advocates matter is finally heard.

2. The petitioners are the original accused Nos 2,3

& 4 along with accused No.1--Rajendra Kamalkumar Patil of Special Case No.9/96 filed by P.I, ACB, Hqrs Ahmedabad City in the court of Special Judge, Ahmedabad (Rural) at Mirzapur, Dist.Ahmedabad. The petitioners have challenged the legality and propriety of the order, dated 17.11.1997 passed by the Special Judge in the above stated case whereby the application-Exh.1 moved by the present petitioners to discharge them from the offences alleged in the chargesheet has been rejected.

3. The material and relevant facts as apparent from the record for the purpose of present revision application could be listed as under:

(i) That on receipt of secret information to the effect that some police personnel are stopping the vehicles on the bypass road leading to the city and have been demanding illegal gratification from the drivers under the threat of filing false cases and are receiving the bribe under the guise of entry fees; the Police Inspector, ACB, Hqrs Ahmedabad city--Mr.H.K.Patel had arranged a running trap on 5.5.95 after requisitioning services as panchas of one M.M.Pandya and S.M.Valand, both from the office of the Dist.Panchayat, Ahmedabad and carried out preliminary part of panchnama on the same day between 1250 hrs and 1300 hrs. That thereafter the complainant said police inspector along with panchas proceeded in a Govt.vehicle at about 1345 hrs to Gandhinagar-Sarkhej highway and had arrived at a place opposite Adalaj police line. That a truck bearing Reg.No.RNM 1299 coming from the direction of Mehsana was stopped by them at about 1445 hrs and the driver of the said truck was requested to act as decoy witness. That the said driver --Mohansinh Hamirji Rajput having agreed to the request of the PI was given five currency notes each of Rs.10/-smeared with anthracene powder after noting the numbers of the same in the panchnama and was told to negotiate with the culprit and to pay said currency notes on demand being made towards illegal gratification. That after recording the said fact in the panchnama the complainant in the company of said decoy witness, panchas and other police personnel proceeded further towards Sarkhej. That as per the arrangement the decoy witness--driver Mohansinh Hamirji Rajput along with panch No.1 M.M.Pandya and PSI--B.V.Puvar as well as other police personnel were asked to sit in the cabin of the said truck while the complainant along with other police personnel and Panch No.2 seated in the police jeep and followed the truck.

(ii) It is the case of the prosecution that the

complainant along with above stated raiding party while passing on the highway leading to Sarkhej arrived at the Khodiyar railway crossing there they had found one traffic mobile van bearing Reg.No.GJ-1-G-2004 stationed on the highway opposite Gopi farm . That petitioner Nos 2 & 3, i.e. Ambadan Bhagwandas Gadhvi and Udaysingh Kalusingh Chauhan were standing at one side of the said mobile van near the highway while the petitioner No.1 and the driver of the mobile van -- Rajendra Kamlakumar Patil (accused No.1) were standing on the highway. That both of them had stopped the said truck carrying the raiding party and Rajendra Kamlakumar Patil (accused No.1) had gone near the driver's cabin and had demanded Rs.40/towards entry fees from the driver--Mohansinh Hamirji Rajput (decoy witness). That the driver--Mohansinh had taken out four currency notes each of Rs.10/- from his right side pocket and had given to said Rajendra Kamlakumar Patil and Rajendra Kamlakumar Patil had counted the notes and had placed same in his right side pocket. That by that time on account of signal given by decoy witness driver--Mohansinh Hamirji Rajput, the complainant in the company of other pancha and police party rushed to the place and caught said Rajendra Kamlakumar Patil. That thereafter, in the presence of Panchas the complainant had disclosed his identity and had found currency notes from the pocket of said Rajendra Kamlakumar Patil. It was identified as the currency notes bearing numbers entered in the panchnama. That one currency note of Rs.10/- was found in the pocket of driver--Mohansinh Rajput and the presence of anthracene powder was also found on both the hands and right side pocket of said Rajendra Kamlakumar Patil as well as on the right hand and right side pocket of truck driver--Mohansinh Rajput. That the complainant carried out the panchnama at about 1600 hrs of the said incident. That the petitioner Nos 2 & 3 having been found near the said place on other side of the mobile van were also called and their names were recorded. On the basis of said fact the complainant had registered offence against the accused--said Rajendra Kamlakumar Patil and the present petitioners under sections 7, 12, 13(1)(i), (ii), (iii) read with 13(2) of Prevention of Corruption Act, 1988. That on further investigation it was found that the accused No.1--Rajendra Kamlakumar Patil as well as present petitioners were found in uniform with said mobile van at the place of said offence though the place was not within the territory of their duty. That on completion of investigation chargesheet is filed against said four accused in the court of Addl.Sessions Judge & Special Judge, Ahmedabad (Rural) at Mirzapur, Dist.Ahmedabad.

(iv) That the present petitioners as accused Nos 2, 3 & 4 of Special Case No.9/96 had moved application-Exh.1 on 12.9.97 contending that during the running trap arranged by the complainant on 5.5.95 only accused No.1 was found to have asked for illegal gratification and had accepted the same. That as per police papers supplied to the accused there is no material connecting the accused Nos 2,3 & 4, directly or indirectly, with the commission of said offences, and thereby, they should be discharged. That as stated hereinabove, said application was decided by the Special Judge and has been rejected vide impugned order.

4. Mr.K.B.Anandjiwala, Ld.advocate appearing on behalf of the petitioners has contended that the Ld.Special Judge has erred by not applying the settled proposition of law to the facts and circumstances of the case as emerging from the material produced with the chargesheet. That the said material does not disclose any fact to connect the the present petitioners in commission of offence alleged in the chargesheet, and thereby, the impugned order deserves to be set aside and quashed. Mr.Ananadjiwala also submitted that during the hearing of said application it was submitted before the Spl.Judge that in the matter of STATE OF GUJARAT vs VASANT B.NAGDA AND OTHERS in CRIMINAL REVISION APPLICATION NO. 189/90 decided on 20.3.90 and STATE OF GUJARAT vs THAKHATSINH SHIVAJI CHAUHAN AND OTHERS in CRIMINAL REVISION APPLICATION nO.131/91 decided on 13.11.1992 this court has taken a view that "if upon consideration of record of the case and submissions made on behalf of the accused the judge finds that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing". That the xerox copies of judgments of the said revision applications were also tendered. However, the Special Judge has failed to consider properly the same and as such the impugned order being bad in law deserves to be set aside and quashed. Shri Anandjiwala has also submitted the following authorities in support of his submissions:

(i) The State of Bihar vs Ramesh Singh (AIR 1977 SC 2018)

(ii) Union of India vs Prafulla Kumar Samal & Anr (AIR 1979 SC 364)

5. As against that Ms B.R.Gajjar, Ld.APP has supported the order of the Ld.Special Judge and has

submitted that the facts emerging from the statements of witnesses and panchnama attached with the chargesheet clearly disclose that the petitioner No.1-Ishwarsinh Ramchand Chauhan (accused No.1) and Rajendra Kamlakumar Patil (accused No.2) both had stopped the subject vehicle and thereafter Rajendra Kamlakumar Patil had demanded illegal gratification from the driver and has accepted. Further more, as per log book of Mobile van bearing Reg.No.GJ-1-G.-2004, no message was received on 5.5.95 between 1250 hrs and 1600 hrs, yet, the mobile van was taken away outside the city limits to the said place of offence by the petitioners as well as said Rajendra Kamlakumar Patil. That the petitioner Nop.4 was incharge of the mobile van at the relevant time. Said circumstances suggest that the petitioners are also involved with said Rajendra Kamlakumar Patil (the driver of the van) in the commission of said offence a alleged and have abated the offence committed by Rajendra Kamlakumar Patil. That thereby the Ld.Special Judge has rightly rejected the application and the petitioners are not entitled to claim discharge under the law.

6. Ld.APP-Ms Gajjar has shown to me the copies of police papers produced with the chargesheet in the trial court and has taken me through the impugned order. The Ld.APP has referred to and relied upon the observations made by the Supreme Court in the matter of State of Maharashtra vs Priya Sharan Maharaj and others (AIR 1997 SC 2041) and Smt.Rashmi Kaur vs Mahesh Kumar Bhada (1997(2) SCC 397) and has urged that while considering the application for discharge the court is not supposed to appreciate the evidence so as to ascertain whether the same would lead to conviction of accused or not for the offences charged

7. That on scrutiny of police papers it appears that except the petitioner No.1-Ishwarsinh Ramchand Chauhan (accused No.2) and Rajendra Kamlakumar Patil (Accused No.1) there is no material to connect atleast the petitioner Nos 3 & 4 with the offences alleged in the chargesheet. Shri K.B.Anandjiwala, Ld.advocate appearing on behalf of petitioners could not dispute the fact when it was pointed out that the truck carrying decoy witness along with the raiding party was also stopped at the place of offence by the petitioner No.1 in the company of said Rajendra Kamlakumar Patil, and thereby, there is sufficient ground to proceed against petitioner No.1 as well as said Rajendra Kamlakumar Patil.

8. On further scrutiny of police papers it appears that the investigation officer has recorded statement of

one J.J.Bhatt, Police Inspector, Traffic branch, Ahmedabad city. Relying on the said statement, Mr.Anandjiwala has submitted that said PI--J.J.Bhatt had taken the said mobile van to Ghatlodia as he was residing there and the petitioners along with said mobile were returning from Ghatlodia after dropping the PI-J.J.Bhatt towards the city through the highway. That on the way the mobile van was stopped as one of the police personnel wanted to ease himself. During that period the driver of the mobile van--Rajendra Kamlakumar Patil has committed the offence as alleged. Thus, though the petitioners were not on duty in the vicinity of place of offence their presence in the mobile van at the said place could be explained by the said statement of the PI--J.J.Bhatt as recorded by the investigation officer. As such, so far as petitioner Nos 2 & 3 are concerned, except the suspicious circumstances of their presence near the scene of offence there is no legal evidence apparent from the material produced with the chargesheet providing any ground to proceed against the petitioners 2 & 3( as accused Nos 3 & 4) of Special Case No.9/96 and thereby the atleast so far as the petitioner Nos 2 & 3 are concerned they are entitled to claim discharge on the settled proposition of law and thereby the petition may be partly allowed.

9. On verification of facts emerging from the material produced on record I find some force in the above stated submission of Mr.Anandjiwala.

10. That the expression "sufficient ground for proceeding against the accused" as occurring in section 227 of Cr.P.C. is elaborately explained by the Supreme Court in the matter of STATE OF BIHAR vs RAMESH SINGH (AIR 1977 SC 2018) vide para 4 as under:

"If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, can not show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial"

11. That in the matter of UNION OF INDIA vs PRAFULLA KUMAR SAMAL (AIR 1979 SC 364) the Supreme Court followed the above-stated observations, and further elaborated the rule by settling the following test to determine the

prima facie case:

"The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused".

12. In the matter of NIRANJAN SINGH KARAM SINGH PUNJABI VS JITENDRA BHIMRAJ BIJJA & ORS (AIR 1990 SC 1962) vide para 7, following the above-stated observations, the Supreme Court has observed as under:

"It seems well settled that at the Ss 227-228 stage i.e. stage of framing the charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence as it can not be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case"

13. That in the instant case the Ld.Special Judge appears to have taken a casual approach to the material produced on record by the investigating agency while appreciating the same in the context of authorities cited at the Bar. That the Ld.Spl.Judge has rejected the application of the petitioners holding that the accused were found near the scene of offence though they were not on duty and under what circumstances they were not present near the scene of offence as alleged to have been committed by the accused No.1--Rajendra Kamlakumar Patil could be decided only at the time of recording evidence.

14. That on application of the test settled by the

Supreme Court in the matters referred to hereinabove to the facts and circumstances apparent from the police papers, in my opinion, the material produced with the chargesheet even if accepted as evidence before it is challenged by cross-examination or rebutted by defence it does not disclose any act or omission on the part of petitioner Nos 2 & 3 to connect them with the offence alleged against them. Hence, I hold that though there is sufficient ground to proceed against petitioner No.1 along with accused No.1--Rajendra Kamlakumar Patil for the offence as alleged in the chargesheet, there is no ground sufficient to proceed against the petitioner Nos 2 & 3 i.e. accused Nos 3 & 4 and thereby the impugned order, dated 17.11.1997 passed below Exh.1 of Special Case No.9/96 by the Ld.Spl.Judge is required to be modified to that extent.

15. On the basis of aforesaid discussion the Criminal Revision Application No.593/97 is partly allowed. The impugned order, dated 17.11.1997 passed by the Ld.Addl.Sessions Judge and Spl.Judge, Ahmedabad (Rural) at Mirzapur, Ahmedabad below Exh.1 in the matter of Special Case No.9/96 is modified as under:

(A) So far as the prayer of petitioner No.1 as accused No.2 of Special Criminal Case No.9/96 claiming discharge from the offence charged against him stands rejected and the impugned order to that extent is confirmed. However, application made by petitioner Nos 2 & 3 (accused Nos 3 & 4) of Special Criminal Case No.9/96 is allowed and the impugned order to that extent is set aside and quashed.

(B) That the petitioner Nos 2 & 3 i.e. original Accused Nos 3 & 4 of Special criminal Case No.9/906 are discharged from the offences alleged against them in the said case. Rule is made absolute accordingly. Interim relief granted earlier stands vacated with no order as to costs.

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